BEFORE THE

SURFACE TRANSPORTATION BOARD

223536

FINANCE DOCKET NO 35147

NORFOLK SOUTHERN RAILWAY COMPANY, PAN AMERICAN RAILWAYS, INC , ET AL -- JOINT CONTROL AND OPERATING POOLING AGREEMENTS – PAN AM SOUTHERN LLC

RESPONSE TO COMMENTS, AND AMENDED REQUEST FOR CONDITION BY COMMITTEE FOR BETTER RAIL SERVICE IN MAINE REQUEST FOR PUBLIC HEARING

Procedural posture of this filing

The Board decision in this matter, effective 27 June, stated 'Responses to comments, protests, requests for conditions, and other opposition, and rebuttal in support of the primary application or related filings must be filed by September 5, 2008 '

Our filing this day constitutes a response to the 30 comments and requests for conditions filed in August Taken together, they create a picture of PAR which cries out for imposition of conditions by the Board

This transaction does not meet two key legal tests for approval

The Committee for Better Rail Service in Maine argues here that, more likely than not, the proposed transaction does not meet two key tests for approval We show here that the transaction will result in a substantial lessening of competition in New England outside of Massachusetts, and the transaction will decrease the essential transportation services of other carriers, regionally and nationally.

Without one condition: sequestration

Applicants can overcome the flaws in the transaction by ensuring that the $47 5 million which PAR (the 'remainder of the Pan Am Railways' system) will receive from Norfolk Southern Railways is used to pay outstanding debts of PAR and its subsidiaries, and is used to pay for infrastructure and equipment which will improve rail service

The Board must require that PAR sequester the $47 5 million to ensure the funds are used only to pay outstanding debts and service improvements.

LEGAL BASIS FOR BOARD DECISION

Statutory basis

Applicants state that they seek approval 'pursuant to 49 USC sec 11323(a)(6) ' {Application, page 37} That statute reads.

11323 (a) The following transactions involving rail carriers providing transportation subject to the jurisdiction of the Board under this part may be carried out only with the approval and authorization of the Board .. (6) Acquisition by a rail carrier of trackage rights over, or joint ownership in or joint use of, a railroad line (and terminals incidental to it) owned or operated by another rail carrier.

Under 49 USC section 11324 (c) the Board 'shall approve and authorize a transaction under this section when it finds the transaction is consistent with the public interest '

And under 11324(d). 'In a proceeding under this section which does not involve the merger or control of at least two Class I railroads, as defined by the Board, the Board shall approve such an application unless it finds that -

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States, and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs '

Regulatory basis

In the Applicants' formal Application, they provide the specific information required under 49 CFR section 1180 6(a)(2) That section requires, in its terms· "A detailed discussion of the public interest justifications in support of the application, indicating how the proposed application is

consistent with the public interest, with particular regard to the relevant statutory criteria, including '

1180 6(a)(2)i, effect on competition Applicants claim the transaction will result in an increase in competition We disagree. it will decrease competition, unless the Board imposes conditions

1180 6(a)(2)iv, effect on adequacy of service, 'as measured by the continuation of essential transportation services by applicants and other carriers'. Applicants claim the transaction will 'result in no reduction in any transportation services.' We disagree it will result in reduced rail service in Maine and elsewhere, unless the Board imposes conditions

Who we are

The Committee to Improve Rail Service in Maine is a group comprised of business, political and civic leaders who have joined to intervene in the matter of Pan Am Southern LLC, in an effort to improve rail service in our State

Need for response to comments made to the Board by others

A review of the 30 comments submitted to the Surface Transportation Board (STB) on the creation of Pan Am Southern reveals three outstanding points

1 The investments to be made and the participation of Norfolk Southern Railroad in the creation of Pan Am Southern bode well for the New England railroad industry, and should be supported

2. Current Pan Am Railways (PAR) service is of poor quality.

3 PAR has a history of making agreements that they do not keep

The Board, in reviewing this transaction, should accept the totality of evidence before it contained in these 30 comments, and conclude that in order that this transaction not result in the failure of PAR and thus the loss of competition in the region, it must impose certain conditions

PAR is not providing good service; this transaction will make it worse.

It is noteworthy that none of the comments applauded current PAR service Indeed, of the nine railroads who commented on the transaction, seven clearly labeled PAR service as bad:

a The Milford-Bennington Railroad (MBR) stated that PAR maintains the track over which

MBR operates in excepted condition This forces MBR to run only three trains a day, when its customer would like four trains [1]

b. The Maine Eastern Railway (MERR) reported that some weeks they receive no service whatsoever, and most weeks they are fortunate to receive a single service day, far below the level promised by PAR.[2]

c. The Vermont Rail System pointed out 'The fact remains that our carriers along the Connecticut River are dependent on B&M for certain freight receipts that are interchanged at Bellows Falls and White River Junction, that B&M is not living up to the service requirements imposed by the ICC; and that B&M has lost interest in sustaining that service, evidently resulting in part from the merger '[3]

d The Montreal, Maine, and Atlantic Railway wrote that 'routings with Springfield Terminal are generally disfavored by customers because of slow service over Springfield Terminal lines '[4]

e. The New England Southern Railroad stated '[F]or the past thirteen months, no payment has been forthcoming for the interline obligations and car hire reimbursements' which PAR owes to NEGS At this point, NEGS has a claim in excess of $500,000 pending in federal court . '[5]

f The Pioneer Valley Railroad said· 'Efforts to develop an operable interchange [with ST at the inactive, out-of-service interchange in Holyoke] and reasonable rate divisions with ST for the movement of traffic over Holyoke have not been successful.'[6]

g The Batten Kill Railroad, which in the past has used PAR, said it lost a major customer because of the quality of PAR service [7]

h The Connecticut Department of Transportation said that service on PAR's Waterbury branch had declined [8]

The Board should be aware that PAR interchanges with the seven railroads above, plus CSXT, NS, the Providence and Worcester Railroad, the New England Central Railroad (NECR), the St. Lawrence and Atlantic Railway, and the New Brunswick Southern Railway CSXT has filed suit

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[1] MBR comment to this transaction FD No 35147
[2] MERR comment to this transaction FD No 35147
[3] Clarendon and Pittsford (VRS) comment to this transaction FD No 35147
[4] Montreal, Maine and Atlantic comment to this transaction FD No 35147
[5] *New England Central v ST,* 04-30235-MAP filed 31 January 2008
[6] Pioneer Valley Railroad comment to this transaction FD No 35147
[7] Batten Kill Railroad comment to this transaction FD No 35147
[8] Connecticut Department of Transportation comment to this transaction FD No 35147

against ST to recover car hire.[9] NECR has filed suit against ST to obtain payment of a judgment for derailment costs.[10]

That is, of the 13 railroads with which PAR interchanges traffic, nine of them have either commented that service is inadequate, or have been forced to file lawsuits because PAR refuses to pay agreed sums

Service will get worse

We are fully aware that the Board can rule only on whether this transaction will affect service Applicants claim the transaction will 'result in no reduction in any transportation services' but this is clearly wrong. The comments filed here show a substantial likelihood that service will decline

First, while service may very well improve on the Patriot Corridor, the main line of the newly-created Pan Am Southern, it will decline on the remainder of the PAR system The comments from the US Clay Producers Association's expert, Gerald Fauth, an economic consultant with extensive experience working for the STB and appearing before the STB, illustrate this Fauth's verified statement reports his conclusion that, following the creation of PAS, Springfield Terminal Railway (ST, the PAR subsidiary who will operate both PAS and PAR) will favor PAS over PAR, will have too much paperwork, and will have overworked employees [11] MBR's owner Peter Leishman, in his verified statement, said 'The transaction is likely to improve service to customers that will be served by [PAS] and result in a degradation of service to everyone else ' Maine Eastern fears loss of its connection with CSXT [12]

Second, the comments show that PAR cannot currently pay its expenses Many car leasing companies and railroads are currently in court, trying to collect car hire These costs are mounting, as the Greenbrier memorandum attached as Exhibit 1 shows Clearly, PAR does not currently have the funds to pay its ongoing expenses,[13] much less pay for the improved infrastructure and equipment it admits it needs [14] .

PAR, in one of the car hire cases, admits it does not have enough revenue to pay all its expenses Eric Lawler, chief financial officer, in an affidavit filed in June 2008 in the *Trinity Rail*

[9] *CSXT v ST*, 08-10220 NMG filed 10 February 2008
[10] *New England Central v ST*, 04-30235-MAP filed 31 January 2008
[11] US Clay Producers comment to this transaction FD No 35147
[12] MBR comment to this transaction FD No 35147
[13] See Exhibit A and list of filings at the end of this document

car hire case, wrote: 'ST has been saving its revenues to meet its ISS [interline settlement system] obligation as well as the capital needs of ST's operation and cash flow is presently extremely limited.' {*Trinity Rail v ST*, US District Court for Massachusetts 06-cv-10187-RCL, ST filing June 2008}

PAR will argue that the funds it will derive from this transaction will change all that. Certainly, if PAR will dedicate the funds for that purpose. But, as the US Clay Producers' Fauth stated 'Although Pan Am will receive $47.5 million in additional funding, there is no indication that Pan Am will use any of this funding to make needed upgrades on the northern lines in order to improve service.'

Given the on-the-record deplorable ability of PAR to pay its bills, PAR is likely to burn through the $47.5 million it will gain from this transaction, and then fail.

Service gets worse: loss of competition

As we have shown, there is a substantial likelihood that service will get worse as a result of this transaction. As PAR weakens and fails, it will be unable to provide transportation competition within New England. Traffic has already moving away from PAR to truck,[15] this situation will worsen. Even if PAR, in a later filing, tells the Board that it will expend all the $47.5 million to improve service, the Board should not accept PAR's word. As we show below, "There is a significant difference between what PAR and its affiliated companies say and what they actually do."[16]

PAR will not keep agreements

While all of us want to see and realize an improvement in the New England railroad industry, we believe that the formation of Pan Am Southern (PAS) will result in further degradation to the already poor service levels. The slow track, and the inadequate locomotive and railcar resources are acknowledged in the comments submitted by The State of Maine.[17] While our governor and officials with the Maine Department of Transportation are willing to accept PAR's word that improvements are forthcoming if PAS is approved, we offer substantial evidence for the Board to conclude that PAR cannot keep its agreements.

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[14] State of Maine comment to this transaction FD No. 35147.
[15] Atlantic Northeast Rails and Ports, Issue 07#11B.
[16] Verified statement of Peter Leishman, MBR comment to this transaction FD No. 35147.
[17] State of Maine comment to this transaction FD No. 35147.

Indeed, contradicting Maine's assertion, PAR President David Fink told employees at the railroad's facilities in Waterville, Maine that PAR does not plan to improve its service model in Maine [18]

Listed are just a few of the commitments that PAR has made but has not kept

a The comments from the Milford-Bennington Railroad show that PAR agreed to install welded rail to provide better service These track improvements were never done [19]

b *The Maine Eastern Railway* cited PAR's agreement to provide service of three days per week to the railroad's interchange in Brunswick, Maine The Maine Eastern reports that some weeks they receive no service whatsoever, and most weeks they are fortunate to receive a single service day Maine Eastern's comment said· 'MERR's concern is that Applicants may not live up to all of their representations '[20]

c. The Vermont Rail System pointed out that PAR had agreed to provide a service level of at least three days per week on the Conn River line, while actual service levels are far less.[21]

d *The State of Maine, through the Northern New England Passenger Rail Authority (NNEPRA),* spent tens of millions of dollars in paying PAR to upgrade the rail line between the Maine and New Hampshire border to Portland, Maine, to provide for the restoration of passenger rail service between Portland and Boston PAR had accepted this money and performed the track work, then refused to allow the trains to run, claiming that the rail wasn't built to sufficient standards to carry the passenger trains It was only after much money was spent on filings with the Surface Transportation Board that this Board forced PAR to run the passenger trains at the design speed [22]

e The State of Maine spent a considerable amount of money returning the former Maine Central Lewiston Lower Branch to service. But Grimmel Industries, the intended customer on the branch, had to turn to the Surface Transportation Board to force PAR to offer a shipping rate to restore rail service to the branch. Rail service has yet to begin, despite the time and effort spent

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[18] Atlantic Northeast Rails and Ports, e-bulletin, 28 July 2008
[19] MBR comment to this transaction FD No 35147
[20] MERR comment to this transaction FD No 35147
[21] Clarendon and Pittsford (VRS) comment to this transaction FD No 35147
[22] *National Railroad Passenger Corporation,* 'Weight of Rail', FD No 33697 (decisions 2001-2003) and earlier case FD No 33381 (1997-1998)

to return the branch to service. In the meantime, the intended customers ship and receive their commerce by truck [23]

f This year, the Greenbrier Companies brought suit against PAR subsidiary Springfield Terminal (ST) for non-payment of car-hire charges. [See Exhibit 1.] This is the same Springfield Terminal that is to operate the Pan Am Southern. In its legal memorandum, Greenbrier points to 11 cases filed by railroads and/or railroad suppliers against PAR or its subsidiaries in the last couple of years

In each one of these cases, Springfield Terminal has made solemn agreements to pay the car leasing company or railroad, and then reneged on that agreement.

The list includes Class 1 railroads like Union Pacific and CSX To Greenbrier's list, we add four other filings [24]

g. Even the simple expectation that they will pay their property taxes in a timely manner, a civic responsibility expected of all of us, is something that PAR has repeatedly ignored We offer the examples of Deerfield, Massachusetts[25] and Waterville, Maine.[26]

Lack of management skills

The record before the Board should raise significant doubt about PAR management The behavior of PAR's sister company, Pan Am Airways, was brought into question in a recent USDOT certification procedure The USDOT found the management of Pan Am Airways (consisting of the same top manager and owner as in the railroad) incompetent or dishonest This record is before the STB in this transaction [27]

Public interest in meeting significant transportation needs

Under 49 USC section 11324(d), the Board must take into account 'the public interest in meeting significant transportation needs.'

Because of PAR's behavior, management, and weakened state, its ability to compete with other railroads and other other modes of transport has been compromised substantially, both here in the State of Maine and nationally.

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[23] Atlantic Northeast Rails and Ports, issue 08#08B 2 September 2008
[24] See Exhibit A and list of filings at the end of this document
[25] The Valley Advocate, January 25, 2007 Eesha Williams valleyadvocate com
[26] The Morning Sentinel, February 24, 2007 Editorials page 7A morningsentinel mainetoday com
[27] Hecking and Remington LLP comment on this transaction FD No 35147

For example, with the filing of their lawsuit against Springfield Terminal, Greenbrier announced that they were removing 100 boxcars from service to customers of PAR. These are railcars that are desperately needed by a State that produces the second highest amount of paper in the United States [28]

Maine is hurting economically. As was pointed out in the comments submitted by the Montreal, Maine and Atlantic Railroad, Maine was one of just two states that had negative economic growth in 2006 The other state was Louisiana [29] Maine has suffered from an economic Hurricane Katrina, and there is no relief in sight

Within the last month, one paper company has announced the permanent closure of a paper machine, resulting in the loss of 150 jobs, and another paper company has closed an entire mill, resulting in the loss of another 200 jobs While PAR cannot be held solely responsible for these closures, their poor service levels do not help the situation

The NewPage paper Mill in Rumford, Maine moved 71% of their outbound products by PAR rail in 2002. By 2007, that number had dropped to 39% [30] I

In a study commissioned by the Maine Department of Transportation on the feasibility of returning the former Maine Central Mountain Sub-Division to service, it was shown that the Maine Central Railroad - which PAR has owned since 1981, moved 162, 658 carloads of freight in 1972 [31] Today, that number is approximately 69,000 [32] And this drop in traffic took place in a time span when the amount of freight being moved by America's railroads has more than doubled [33]

Request for conditions

We agree with the US Clay Producers' Fauth· The Board 'should consider imposing conditions that will insure adequate service over the non-PAS lines and provide non-PAS shippers with the same options for alternative service the PAS shippers will have '

At the very least, the Board should require that any and all money proceeds that PAR receives as a result of the formation of PAS be sequestered, with the condition that this money be spent only to pay off railroad-related outstanding debts of PAR and its subsidiaries, and to pay for

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[28] http.//www tappi org/s_tappi/doc asp?CID=183&DID=549321
[29] Montreal, Maine and Atlantic comment to this transaction FD No 35147
[30] Atlantic Northeast Rails and Ports, Issue 07#11B
[31] Mountain Division Rail Study, Maine Department of Transportation, December 2007
[32] Atlantic Northeast Rails and Ports, 08#02A
[33] http //www aar org/~/media/AAR/BackgroundPapers/775 ashx

infrastructure and equipment which will improve rail service.

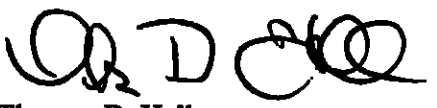
This would ameliorate the significant anti-competitive aspect of this transaction, namely, that the remaining PAR system will continue to run down and provide no competition either to trucks or other railroads

In particular, we recommend that the funds be expended in Maine in the manner outlined in our first comment.

Request for public hearing

According to 49 USC section 11324 (a) 'The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.' We repeat our request for a public hearing in the State of Maine on these proceedings This will provide an opportunity for public input on a on a subject matter that has already had a tremendous impact on our State. As we pointed out in our earlier comments, the Maine Attorney General's office is investigating the possibility of filing a feeder line application with the STB, with the possible intent of finding another rail operator to replace PAR PAR's business base is heavily dependent on rail traffic moving to and from the State of Maine

'I, Thomas D Hall, declare under penalty of perjury that the foregoing is true and correct Further, I certify that I am qualified and authorized to file this pleading. Executed on 5 September, 2008 '



Thomas D Hall
Chairman
The Committee to Improve Rail Service in Maine
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(207) 688-4294

Dated. 5 September, 2008

List of court filings against PAR and/or its' subsidiaries

1 *Union Pacific v ST* 01-10934 RCL filed 2001.

2 *First Union Rail Corporation v ST* 03-12374 DPW filed 2003

3 *San Luis Central v ST* 04-12220 PBS removed to federal court)

4. *GATX v ST*, 04-32147 RWZ filed 12 October 2004

5. *Railcar Management v ST*, 05-12282 GAO filed 15 October 2005

6 *San Luis Central v ST* 06-10554 WGY (filed 15 May 2006) [See Atlantic Northeast Rails and Ports No 06#08B, 06#09A]

7. *American Railcar Leasing v ST* 06-cv-10375 WGY filed 25 May 2006

8 *GATX v ST 06-11042* RWZ filed 14 June 2006

9. *Schuylkill Rail Car v ST* 07-10052 NMG filed 10 January 2007

10 *GATX v ST*, 07-10174 WGY filed 30 January 2007

11 *Union Pacific Railroad v ST* 07-12322 JLT filed 12 December 2007

12 *CSXT v ST*, 08-10220 NMG filed 10 February 2008

13 *GATX v ST*, 08-10845 JLT filed 20 May 2008

14. *First Union v ST* 06-0015 (Western District of North Carolina) filed 21 September 2006 [see Atlantic Northeast Rails and Ports 06#09A]

15 *Trinity Rail v ST* 06-10187 RCL filed 2006 [see Atlantic Northeast Rails and Ports No 08#07A]

16. *Union Tank v ST* 05-12364 filed 2005 [see Atlantic Northeast Rails and Ports No 06#09A]

17 *Indiana Harbor Belt Railroad v ST*, 2 08-cv-155(Northern District of Indiana) filed 2008.

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NORFOLK SOUTHERN RAILWAY COMPANY, PAN AMERICAN RAILWAYS, INC , ET AL – JOINT CONTROL AND OPERATING POOLING AGREEMENTS - PAN AM SOUTHERN LLC

CERTIFICATE OF SERVICE

In accordance with the Board's decision in the above referenced matter, served June 26, 2008, this will certify that The Committee to Improve Rail Service in Maine has this day served notice on all parties of record with a copy of this document, sent by US mail, postage pre-paid

Sincerely,

Thomas D Hall
Chairman
The Committee to Improve Rail Service in Maine
176 Merrill Road
Pownal, Maine 04069
(207) 688-4294

Dated. 5 September, 2008

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

THE GREENBRIER COMPANIES, INC., and GREENBRIER MANAGEMENT SERVICES, LLC Plaintiffs	)	
v. SPRINGFIELD TERMINAL RAILWAY COMPANY and BOSTON & MAINE CORPORATION, Defendants	)	CIVIL ACTION NO 08-10362-NMG

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR RECEIVERSHIP

I. INTRODUCTION

Plaintiffs, The Greenbrier Companies, Inc and Greenbrier Management Services (collectively referred to as "Plaintiffs" or "Greenbrier") submit this memorandum of law in support of their motion for the appointment of a receiver for the corporations operated by Defendants, brought pursuant to Rule 66 of the Federal Rules of Civil Procedure. The appointment of a receivership pursuant to Fed R. Civ. P. 66 is warranted for the reasons stated below.

II. RELEVANT FACTS

Greenbrier is an Oregon corporation with its principal place of business located at One Centerpointe Drive, Suite 200, Lake Oswego, Oregon. (Snyder Aff. ¶ 2, Complaint, ¶ 5) They are a leading international supplier of transportation equipment and services to the railroad industry (Snyder Aff. ¶ 3)

Springfield Terminal Railway Company is a Vermont corporation licensed to do business in the Commonwealth of Massachusetts with its principal place of business located at Iron Horse Park, North Billerica, Massachusetts. (Snyder Aff. ¶ 4; Complaint, ¶ 7) Defendant, Boston &

Exhibit A

Maine Corporation is a Delaware corporation licensed to do business in the Commonwealth of Massachusetts with its principal place of business located at Iron Horse Park, North Billerica, Massachusetts (Springfield Terminal Railway Company and Boston & Maine Corporation are collectively referred to hereafter as "Springfield Terminal" or "Defendants"). (Snyder Aff. ¶ 5; Complaint, ¶ 8) Furthermore, Defendants are subsidiaries of Pan-Am Railways and operate over a network of about 1,600 miles of track in Connecticut, Maine, Massachusetts, New Hampshire, New York, and Vermont. (Snyder Aff ¶ 6)

Defendants have used and continue to use Greenbrier's railcars throughout their network pursuant to Circular No. OT-10, Car Service and Car Hire Agreement ("Circular"). (Complaint, ¶ 11; Ex 1) Additionally, Defendants also have used and continue to use railcars owned by numerous signatories to the Circular. (Ex. 1) [1] The Circular is the Operating Transportation guide that covers the rules surrounding the Code of Car Service Rules/Code of Car Hire Rules. (Ex. 1) The Circular is a contract whereby all parties promise and agree to abide by the rules contained within the Circular. (Ex. 1, Answer, ¶ 12) Under the Circular, Defendants are required to keep an accounting of their use of railcars, including, but not limited to those railcars owned or managed by Greenbrier. (Ex. 1; Answer, ¶ 13) The charge for the use of railcars is termed "Car Hire" and is calculated using formulas set forth in the Circular. (Ex 1) Also, pursuant to the agreement, Defendants are required to send to Greenbrier a monthly accounting of their Car Hire charges and submit payment for said use. (Ex. 1; Answer ¶¶ 15-17)

Prior to 2004, Springfield Terminal only sporadically paid Car Hire charges to Greenbrier, and a significant Car Hire debt began accruing. (Snyder Aff. ¶ 7) Greenbrier conducted good-faith negotiations with Springfield Terminal to reduce this debt and in June of

[1] Some of the companies whose railcars (or railcars under their control) have been used by Defendants include San Luis Central Railroad Company, Rail Management Corporation, Union Pacific Railroad Company, First Union Rail

2004, the parties entered into a settlement agreement ("First Settlement Agreement") whereby Defendants promised to pay both the arrearage in Car Hire and keep current on the monthly charges going forward. (Ex. 2; Snyder Aff., ¶ 8) However, in an oft repeated pattern, Defendants, after having entered into the First Settlement Agreement, simply refused to live up to the terms of the agreement. (Snyder Aff , ¶ 9) On February 2, 2006, Plaintiffs, brought suit against Defendants in the United States District Court for the District of Massachusetts to recover Car Hire owed. *See Greenbrier et al. v. Springfield Terminal et al* , Civil Docket No. 06-10207-NMG.

Aside from the enormous outstanding debt, Defendants continue to accrue new charges (up to the present day) that fluctuate between the amounts of $70,000 to $75,000 per month. (Snyder Aff., ¶ 14) As a result of filing suit the parties entered into an Agreement for Judgment in the amount of $838,559.69 on March 1, 2007 (Ex. 3; Answer, ¶ 20) The terms of the Agreement for Judgment were specifically laid out in yet another settlement agreement ("Second Settlement Agreement") between Defendants and Greenbrier. (Exs. 3, 4) Again, Defendants initially fulfilled the terms of this new agreement, but then just stopped paying both the outstanding Car Hire and the ever accruing monthly charges. (Snyder Aff., ¶¶ 10-12; Answer, ¶¶ 17, 25, 27) Pursuant to the Second Settlement Agreement, Defendants only made four payments totaling $300,000. (Snyder Aff., ¶ 12)

In 2008 Greenbrier was able to recover $ 513, 559 69 through ex parte trustee process. (Ex. 5) However, to date Defendants continue to owe approximately $74,453.50 in accordance with the Second Settlement Agreement.[2] Current outstanding Car Hire debt amounts to a staggering $1,244,104.59 (this figure includes the $25,000 in car hire still owed in accordance

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Corporation, GATX Financial Corporation, American Railcar Leasing, LLC, Schuylkill Rail Car, Inc., and CSX Transportation, Inc. .

with the Second Settlement Agreement) as of July 31, 2008.[3] As stated above, debt continues to mount as new Car Hire charges accrue on a monthly basis. (Snyder Aff., ¶ 14) Defendants have also failed to pay numerous other parties outstanding Car Hire and have forced them to file suit to recover outstanding debt. (Ex. 6-16, 19-20)

Just since 2004, Defendants have failed to timely remit payment of Car Hire to not only Greenbrier, but numerous other signatories to the Circular. *See San Luis Central Railroad Co, v Springfield Terminal Ry Co., et al*, Civil Action No. 04-12229 PBS (Removed to Federal Court on October 25, 2004) (Ex. 6); *GATX Financial Corporation v. Springfield Terminal Railway Company*, Civil Action No. 04- 12147 RWZ (filed October 12, 2004)(Ex 7); *Rail Management Corp v. Springfield Terminal Ry. Co*, Civil Action No. 05-12282 GAO (filed November 15, 2005)(Ex. 8); *The San Luis Central Railroad Company v. Springfield Terminal Railway Company*, Civil Action No 06-10554 WGY (filed May 15, 2006)(Ex 9). *American Railcar Leasing, LLC v Springfield Terminal Railway Co*, Civil Action No 06 CV 10375 WGY (filed May 25, 2006)(Ex 10); *GATX Financial Corporation v Springfield Terminal Railway Co, Inc*, Civil Action No. 06 -11042 RWZ (filed on June 14, 2006)(Ex. 11); *Schuylkill Rail Car, Inc v Springfield Terminal Railway Company*, Civil Action No. 07-10052 NMG (filed on January 10, 2007)(Ex. 12); *Union Pacific Railroad Company v Springfield Terminal Railway Company*, Civil Action No 07 -12322 JLT (filed on December 12, 2007)(Ex 13), *GATX Financial Corporation v Springfield Terminal Railway Co., Inc*, Civil Action No.07-10174 WGY (filed on January 30, 2007)(Ex. 14); *CSX Transportation, Inc. v Springfield Terminal Railway Company*, Civil Action No.08-10220 NMG (filed on February 10, 2008)(Ex. 15), *GATX*

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[2] This amount reflects outstanding principle ($25,000) plus interest ($49,453.50) in the amount of 6% resulting from Defendants' breach of the Second Settlement Agreement.

[3] This amount already includes credits for all amounts recovered since 2006 by Greenbrier (Snyder Aff., ¶ 15)

Financial Corporation v Springfield Terminal Railway Co , Inc , Civil Action No.08-10845 JLT (filed on May 20, 2008)(Ex. 16).[4]

On March 4, 2008, Greenbrier was forced to file the present matter before the Court, in order to collect Car Hire charges accrued after the filing of their first complaint on February 2, 2006. Finally, Springfield Terminal, on or about May 30, 2008, filed with the Surface Transportation Board ("STB")(successor to the Interstate Commerce Commission) an application proposing to merge a portion of their operations with another railroad entity, Norfolk Southern Railway Company. (Ex. 17) While this merger has not yet been approved by the STB, it represents, potentially, a significant expansion of Springfield Terminal's operations. (Ex. 17)

III. LEGAL ARGUMENT

A party in a civil action may seek the appointment of a receiver pursuant Rule 66 of the Federal Rules of Civil Procedures. Fed R. Civ P. 66. Rule 66 states:

> These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.

Id

The appointment of a receiver is an ancillary remedy employed to further final relief for Plaintiff. *Garden Homes, Inc v. U.S.*, 200 F2d 299, 301 (1st Cir. 1953). Moreover, the *appointment of a receiver by a court of equity is appropriate if equity dictates such a need. Id.* The decision to appoint a receiver lies within the discretion of the court. *Consolidated Rail Corp v. Fore River Ry Co.*, 861 F 2d 322, 326-27 (1st Cir. 1988). In the First Circuit, federal courts weighing a motion for the appointment of a receiver under Rule 66 consider a number of

[4] Additionally, there were two other suits filed in 2001 and 2003. *See Union Pacific Railroad Company v Springfield Terminal Railway Company*, Civil Action No 01-10934 RCL (Ex. 19), *First Union Rail Corporation v Springfield Terminal Railway Co., Inc.*, et al , Civil Action No 03-12374 DPW (Ex. 20).

factors ". . including. fraudulent conduct by the defendant, imminent danger that the defendant will lose or squander the property, the inadequacy of legal remedies, the plaintiff's probable success in the action, the possibility of irreparable harm to the plaintiff, and the likelihood that harm to the plaintiff by denial would be greater than the injury to the defendant of appointing the receiver." *Alta Subordinated Debt Partners II, L.P. v. Tele-Media Co. of Carolinas*, 1995 WL 464925 * 1 (D. Mass)(*citing Consolidated Rail Corp.*, 861 F.2d at 326) *See Chase Manhattan N.A. v Turabo Shopping Center Inc.*, 683 F 2d 25, 26-27 (1st Cir. 1982). Plaintiffs concede that such a remedy is an extraordinary measure requiring a "clear showing that .. emergency exists, in order to protect the interests of the plaintiff in the property " *Alta Subordinated Debt Partners II, L.P.*, 1995 WL at *1 (*citing Commodity Futures Trading Comm'n v. Comvest Trading Corp*, 481 F.Supp. 438, 441 [D Mass 1979]).

First, it is Plaintiffs' contention that the appointment of receiver in this case is warranted as Defendants' unfair, deceptive and fraudulent business practices have and continue to have a significant negative impact on Greenbrier's ability to conduct business This is not only true for Greenbrier, but also for no less than eight (8) other companies that are forced to contend with Defendants' conduct in regards to Car Hire. This conduct by Springfield Terminal, ignoring its contractual responsibilities under Circular No.OT-10, and then knowingly and fraudulently entering into contracts with creditors in a dilatory effort to resist payment of a valid debt is the very same type of conduct that the Massachusetts Consumer Protection Act, Massachusetts General Laws, Chapter 93A was enacted to stop. Unfortunately, the deterrent effects of Chapter 93A cannot be utilized by Plaintiffs as it is pre-empted by the Interstate Commerce Commission Termination Act ("ICCTA"). *See San Luis Central R.R. Co. v Springfield Terminal Ry Co*, 369 F Supp.2d 172, 177 (D.Mass. 2005). However, an analysis of Springfield Terminal's commercial dealings with other businesses in the context of a Chapter 93A violation is

instructive insofar as it highlights for the Court that Defendants have knowingly engaged in the type of conduct normally barred in Massachusetts. The most galling aspect of Springfield Terminal's fraudulent and unfair business practices is the fact that the companies are not in financial distress. As Plaintiffs' Motion for Real-Estate Attachment clearly denotes, Springfield Terminal and its affiliated companies own significant property worth millions of dollars. *See* Motion for Real-Estate Attachment. Furthermore, Springfield Terminal is planning to expand its business by merging a portion of its business with another railroad, Norfolk Southern, in an effort to create a new rail line in the Northeast (Ex. 17). Apparently, Springfield Terminal intends to complete this expansion on the backs of Greenbrier and its other competitors. The behavior of the Defendants strongly supports the appointment of a receiver.

Second, all legal remedies short of receivership have proven inadequate as Springfield Terminal continues to thwart attempts by its creditors to collect unpaid Car Hire charges. As the facts reveal, significant time and resources have been wasted, not only by Plaintiffs but also by the Court, in forcing Springfield Terminal to pay its bills Springfield Terminal realizes that because of the pre-emptive effect of the ICCTA, Defendants are shielded from traditional avenues of relief (For example Chapter 93A) afforded companies doing business in Massachusetts This knowledge only emboldens Defendants to abandon any semblance of honesty and fair play normally associated with the modern commercial world It places Greenbrier and a myriad of other similarly situated companies at a distinct competitive disadvantage as they lack sufficient legal remedies to halt Springfield Terminal's activity and force payment of valid debt.

Third, as Defendants' Answer plainly states, there is no denying that Car Hire is owed. Therefore, Plaintiffs are more than likely to succeed on the merits of their claims.

Finally, the denial of Plaintiffs' motion would adversely impact not only Greenbrier but also interstate commerce as the fraudulent, deceptive and unfair commercial practices of the management of Springfield Terminal over the years has allowed them to gain an unfair competitive advantage over their competitors. Unfair competition in the context of Chapter 93A has been defined as ". . . not just injury to a single consumer or other business caused by isolated conduct, but [] injury to the marketplace caused by a pattern of conduct. Injury to the marketplace consists of a pattern of conduct, which by preventing consumers from making an informed market decision, impairs the ability of a competitor to compete fairly." *Massachusetts School of Law at Andover, Inc v. American Bar Ass'n*, 952 F. Supp. 884, 890 (D.Mass. 1997). As more fully explained below, Greenbrier and other companies continue to suffer significant damage as the withholding of Car Hire by Springfield Terminal reduces cash flow, inhibits commercial growth, contributed to the decision to institute a reduction in force by Greenbrier and allows Defendants to obtain interest free loans. Any adverse effect on Springfield Terminal is negligible.

1. Unfair, Deceptive and Fraudulent Conduct by Springfield Terminal

Springfield Terminal has engaged in concerted pattern of unfair, deceptive and fraudulent business practices in order to avoid paying Car Hire charges As the Court is aware, in Massachusetts, such types of business practices are prohibited pursuant to Massachusetts General Laws, Chapter 93A *et seq*. Specifically, under Section 2 of Chapter 93A it is unlawful for a business to engage in:

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce . .

M.G.L c.93A, § 2. Under Section 11 of Chapter 93A, businesses injured by such conduct may bring a civil action against the offending party. *See* M.G L c 93A, § 11. A review of Chapter

93A is instructive in order to highlight for the Court the type of fraudulent activities that Springfield Terminal is engaged in that warrants the appointment of a receiver in this case.

As the facts plainly set forth, Defendants have repeatedly withheld payment of Car Hire payments that they were contractually bound to pay Greenbrier and others.[5] It is all the more egregious considering that the Car Hire payment amounts are based upon figures provided by Springfield Terminal. Additionally, Greenbrier is not alone. No less than eleven (11) complaints have been filed by other companies seeking payment of Car Hire, with facts almost identical to the present action (this figure does not include the two complaints filed by Plaintiffs or the two filed in 2001 and 2003). The strategy employed by Defendants is simple Springfield Terminal stops paying Car Hire charges and then typically enters into a payment plan with the creditor without any intention of paying the outstanding Car Hire. Inevitably, Springfield Terminal breaches the repayment plan forcing the creditor to engage in expensive litigation to collect what is owed them At no point in time do the Defendants ever deny owing Car Hire as the end game for Springfield Terminal is merely delaying payment for as long as possible

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[5] Plaintiff concedes that a simple breach of contract claim, without some sort of "level of rascality", does not fall within the rubric of an unfair or deceptive trade practice. *See San Luis Central R.R. Co v. Springfield Terminal Ry Co.*, 369 F Supp 2d 172, 177 (D Mass 2005)(*citing Whittinsville Plaza, Inc v Kotseas*, 378 Mass 85 [1979]). However, there are numerous cases where the court has found a defendant's behavior surrounding a breach of contract claim violated c 93A. For example, the court found deceptive conduct in the context of a breach of contract claim where defendant made repeated assurances of an intent to pay an outstanding obligation *Arthur D Little Int'l, Inc v Dooyang Corp.*, 979 F Supp 919, 925 (D.Mass. 1997). As the court explained "[Dooyang] repeatedly expressed an intent to pay ADL when it had no intent to do so, and it used pretexts to explain the payment failure. This deceptive conduct prejudiced ADL because it delayed instituting litigation to collect a lawful debt. This bad faith behavior when ADL attempted to enforce the contract constitutes a breach of the duty of good faith and fair dealing in violation of Chapter 93A" *Id.* The court went on to label as deceptive conduct ". a strategy of commercial extortion by failing to pay clear obligations . to force favorable price concessions through the threat of expensive litigation." *Id. See also Commercial Union Ins Co. v. Seven Provinces Ins. Co*, 217 F.3d 33, 40 (1st Cir. 2000)(describing 'foot dragging' and 'stringing [the plaintiff] along' with regards to payment of debt pursuant to a contract as "extortionate conduct"); *Pepsi Cola Metropolitan Bottling Co, Inc. v Checkers Inc.*, 754 F.2d 10, 18 (1st Cir 1985)(finding violation of Chapter 93A where defendant withheld payment not because of a dispute over validity of debt or inability to pay but because company wanted to use non-payment as leverage to gain favorable concessions); *Massachusetts Employers Ins Exch. v Propac-Mass, Inc.*, 420 Mass. 39, 43 (1995)(stating that "conduct undertaken as leverage to destroy the rights of another party to agreement while the agreement is still in effect . has a coercive quality that, with the other facts, warranted a finding of unfair acts or practices"), *Anthony's Pier Four, Inc v HBC Associates*, 411 Mass. 451, 474 (1991)(explaining that conduct 'in disregard of known

without repercussion rather than an actual dispute over the validity of the debt. (*See* Answer,¶¶ 17, 25, 27) Sometimes, as is the case with Greenbrier, Defendants may enter into an Agreement for Judgment with the creditor knowing full well that they have no intention of ever paying the full amount owed. During the period of time between the initial breach and final disposition of the claim, Springfield Terminal in essence receives an interest free line of credit. This pattern is then repeated over and over again.

The scheme outlined above is deceptive and fraudulent and would be a clear violation of Chapter 93A. It goes well beyond a simple breach of contract dispute insofar as Springfield Terminal is knowingly and willfully breaching its duties under all agreements and contracts associated with Car Hire in order to gain free financing and an unfair competitive advantage from businesses that are bound by Circular No OT-10 Springfield Terminal's practice is akin to extortion in the sense that Defendants are forcing Greenbrier (and others) to do something Plaintiffs would not normally be legally required to do provide Springfield Terminal with an interest free loan. *Pepsi Cola Metropolitan Bottling Co , Inc* , 754 F 2d at 19. Equity demands that the Court step in and halt this practice by appointing a receiver pursuant to Fed R. Civ. P. 66.

2. Inadequacy of Legal Remedies

In a normal breach of contract situation where one party to a contract withholds payment for services from the other, the injured party would, at some point, refuse to provide further services until payment was rendered. Unfortunately, Greenbrier and the other entities listed above do not possess that luxury. A refusal to allow Springfield Terminal usage of railcars undoubtedly would cause a disruption of interstate commerce. Also, pursuant to Circular No.OT-10 such actions by Greenbrier are expressly forbidden. The practical effect of this is that

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contractual arrangements' and intended to secure benefits for the breaching party constitutes an unfair act or practice

Plaintiffs are trapped, unable to halt Springfield Terminal from using their rail cars and yet equally frustrated in their attempts to collect rents for the railcar's usage.

It is very nature of Car Hire that it accrues on a monthly basis and as a result, Greenbrier is only left with the untenable and expensive option of having to continually file suit in order to collect the unpaid Car Hire Moreover, Springfield Terminal operates in such a manner with impunity as its management realizes that Car Hire creditors have few options and are unable to bring any state tort claims or actions under M G.L. c.93A because of federal pre-emption *See San Luis Central R.R. Co* , 369 F.Supp.2d at 177. The inadequacies of present legal remedies are self-evident based upon Springfield Terminal's repeated deceptive, fraudulent and unfair withholding of Car Hire charges and the total of eleven (11) complaints filed against them from 2004 to 2008 in Massachusetts alone.[6]

3. Probable Success

As the parties' complaint and answer clearly set forth, there is no dispute that Car Hire is owed to Greenbrier. See Complaint and Answer Specifically, Springfield Terminal has admitted to owing Greenbrier Car Hire in paragraphs 14, 25 and 27 of its Answer[7] The current amount of Car Hire owed amounts to $1,244,104.59 (this figure includes the $25,000 in car hire still owed in accordance with the Second Settlement Agreement) as of July 31, 2008. Further, Defendants in *Greenbrier Companies Inc. et al., v. Springfield Terminal, et al* , Civil Action No. 06-10207-NMG, entered into an Agreement for Judgment. The balance of the amount owed, in accordance with the Second Settlement Agreement, has not been paid to date and amounts to

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for c.93A purposes)

[6] As a side note, Springfield Terminal's bad faith business practices are not just limited to its Car Hire creditors. In a recent Surface Transportation Board filing, the City of Springfield noted that Defendants have refused to remit payment of approximately $250,000 in back taxes owed the Town of Deerfield and failed to pay their water bill to the City of Greenfield (responding only when shut-off is threatened). (Ex. 18)

[7] While there is a dispute over the actual amount owed Plaintiffs, Defendants do not deny that car hire is owed to Greenbrier

$74,453.50 (this figure includes principal and interest). Based on the aforementioned, Greenbrier has a high probability of success on the merits

4. The Adverse Impact on Greenbrier, the Railroad Industry, Third Party Manufacturers, Shippers and Interstate Commerce should the Court deny the Motion for Receiver

As is the case in most industries, adverse economic situations often result in far reaching and sometimes unforeseen consequences. There is a trickle down or "ripple effect" directly related to Springfield Terminal's failure to pay current and outstanding Car Hire charges. Unfortunately, Springfield Terminal's decision to refuse to remit payment of valid debt not only impacts Greenbrier directly but also the railroad industry as a whole, third party manufacturers/shippers, the consumer and even the environment

a Financial Impact on Greenbrier

The refusal of Defendants to pay Car Hire charges in a timely matter impacts Greenbrier's cash flow, their ability to pay outstanding debts (including payroll) as they become due and capital expenditures (Snyder Aff., ¶16) Just this month Springfield Terminal – Boston & Maine used Greenbrier's assets and accumulated $75,000 in usage (car hire) fees yet refuse to pay for such usage. (Snyder Aff., ¶ 17) As a result, Greenbrier must borrow money from other sources to sustain that debt. (Snyder Aff., ¶ 18) Unfortunately, Greenbrier is forced to allow Springfield Terminal to use its property because of the strict embargo rules under the ICCTA and Circular No. OT-10 In addition to having to provide Defendants services, Greenbrier must expend resources for maintenance and insurance with little likelihood of a return on their investment. (Snyder Aff., ¶ 19) Additionally, Greenbrier's ability to secure financing in the form of credit/loans in this industry is already particularly difficult. (Snyder Aff., ¶ 20) Historically, financial institutions have been hesitant to extend credit in instances where the industry rules for per diem usage are set via regulation. (Snyder Aff., ¶ 21) This is true in the case of Greenbrier's operations. (Snyder Aff., ¶ 21) Recently, the large per diem users who are failing to pay on this

per diem based system have made it extremely difficult to attract investment capital. (Snyder Aff., ¶ 22) Investment capital in this industry, for this market, and for these railcars is critical. (Snyder Aff., ¶ 23) The majority of the debt owed by Springfield Terminal in this case is due to its use of boxcars that represent a portion of Greenbrier's boxcar fleet. (Snyder Aff., ¶ 24) The North American box car fleet is Greenbrier's oldest fleet and among the oldest assets in this industry. (Snyder Aff., ¶ 25) Being deprived of investment capital to renew and replace such fleets will have a detrimental long term impact on Greenbrier and no doubt on the assets it manages (Snyder Aff., ¶ 25)

In a similar vein, the debt to management fee income ratio is of significant concern There is approximately $1.244 million that is owed by Springfield Terminal currently (Snyder Aff., ¶ 26) This amount increases by approximately $75,000 per month. (Snyder Aff., ¶ 26) Greenbrier only receives $4 7 million in revenue annually on management fees arising from its services business Greenbrier's ability to effectuate and collect this debt is significant (Snyder Aff., ¶ 26) Moreover, the overall income of Greenbrier Leasing LLC, of which Greenbrier Management Services is a subsidiary, is only $100 million. (Snyder Aff., ¶ 27) This debt represents 1% of Greenbrier Leasing LLC's annual revenue. (Snyder Aff., ¶ 27)

Finally, another "ripple effect" of Springfield Terminal's blatant failure to pay legitimate debt is the loss of jobs at Greenbrier. Since March 2008, ten jobs have already been eliminated and two that were scheduled to be added in this fiscal year will not be added in part due to the "substantial impact of" the bad debt of Springfield Terminal. (Snyder Aff., ¶ 28) While there is no doubt that this is a time of financial difficulty and that "business is tough enough" the effect of bad debt is amplified even more in this down market.

b. Impact on Greenbrier's ability to attract and maintain customers

Greenbrier is one of the largest and most effective per diem based rate car leasing companies; its operations not only consist of managing their own assets, but they also act in a fiduciary capacity by managing the assets of third party clients. (Snyder Aff., ¶ 3) Greenbrier's ability to recover car hire for these third parties is critical to their operations as it is a core component of the services that Greenbrier provides to its clients (Snyder Aff., ¶ 16) Greenbrier's ability to "attract and maintain" these customers in large part depends on its successful recoupment of the monies that are owed its clientele for the use of their assets. (Snyder Aff., ¶ 29) On numerous occasions over the past four years Greenbrier has been contacted by their customers wanting to know the status of Springfield Terminal's old debt in order to determine whether or not such debt needed to be written off. (Snyder Aff., 29) In the event that these third parties cannot collect outstanding car-hire, their businesses are and will be adversely affected.

c. Failure to appoint a receiver for Springfield Terminal will substantially impact Interstate Commerce

It is the general practice for the rail hire business that third parties lease boxcars and as a result have "quiet enjoyment over the same" Greenbrier does not micromanage (nor does it have a right to) where boxcars are sent or how they are used.[8] Greenbrier is in the process of withdrawing 100 boxcars from the Springfield Terminal region by refusing to renew a lease for these 100 boxcars with Eastern and Maine Railroad. (Snyder Aff., ¶ 30) This action is directly related to Springfield Terminal's refusal to pay car hire charges and will affect paper companies that ship products into the Northeastern United States via the Springfield Terminal region. These

[8] The Lessee's use of boxcars is subject to little or no restrictions aside from those associated with the transport of hazardous materials and out-of-country usage (Snyder Aff., ¶ 3)

cars will be pulled out of service in this region and put into a different service territory resulting in an interruption of service for users transporting goods using these boxcars. Regrettably, Greenbrier will continue to divert assets to other, more profitable regions of the country, when the opportunity presents itself.[9] The inevitable cost of Springfield Terminal's actions will be reflected in higher transport costs to third parties that will in turn be eventually passed onto the consumer. Moreover, these third parties may be forced to use less efficient alternative methods of transportation (at least in the short-term) to compensate for the reduction of available boxcars If this is the case, transportation, such as commercial tractor trailers, could increase fuel consumption and pollution in the Northeast region.

d. Impact of third party financial institutions

Prior to 1980 most of the railroads assets were owned by railroad entities operating as a railroad (Snyder Aff., ¶ 31) However, that significantly changed in the past twenty-five years as presently approximately 65% of all railcars in North America are not owned by railroad entities; rather they are owned by non-railroad entities such as financial institutions and private sector banks. (Snyder Aff., ¶ 31) For example, GATX, CIT, First Union, General Electric and AIG are all non-railroad entities with ownership interests in railcars.[10] (Snyder Aff., ¶ 31) Their failure to recoup monies owed on such debt is having a detrimental impact on their ability to operate and/or recover from this period of financial crisis.

5 The Demise of Circular No. OT-10 and the Car Hire System

The system of rail/car hire and the rules promulgated to effectuate that system was created to be a self maintaining system where entities simply pay rent in accordance with their

[9] Unfortunately, Greenbrier and the companies that it provides management services to have a limited ability to utilize this option to remedy the situation as Greenbrier has only a finite number of boxcars leased out to third parties where non-renewal is a viable option.

[10] In fact, First Union was one of the plaintiffs forced to use Springfield Terminal in order to recover unpaid car hire debt. (Ex. 20)

usage. These rules, as outlined in Circular No. OT-10, have been in effect for many years and operate on the honesty and integrity of the companies that utilize the railroad. Springfield Terminal's disregard for these rules and regulations place this carefully crafted system in jeopardy. Other entities may simply take a "why fight them when we can join them" approach and refuse to pay car hire charges. The appointment of a receivership would send a clear message that such behavior will not be tolerated

IV CONCLUSION

For the reasons set forth above, Plaintiffs request

1. That a receiver be appointed for the Defendants' corporations;
2. That said receiver be authorized:
   (a) to take charge of the Defendants' estate, property, and effects;
   (b) to collect the debts, obligations or property due the Defendants' corporation,
   (c) to prosecute and defend suits in the name of the Defendants' corporation; and
   (d) To do all other acts which may be necessary or desirable for a final settlement of the Defendants' debt owed to Plaintiffs.
3. For such other relief as to this court deems just.

GREENBRIER COMPANIES, INC. AND GREENBRIER MANAGEMENT SERVICES,

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